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LEGEND

Issuer =

Entity X =

Projects =

Bonds =

Utilities =

Dear

This is in response to the request submitted on behalf of Issuer and Entity X for certain rulings regarding the execution and implementation of the Proposed Agreements (described below).

Issuer, a joint operating agency, is authorized to construct, own, and operate facilities for the generation, transmission, and marketing of electric power at wholesale. It is not authorized to sell electric power to retail customers.

Prior to the commencement of construction on each Project, Issuer and Entity X entered into separate, but substantially identical, contracts (the "Contracts") with certain Utilities (the "Buyers") with respect to that Project. Under each such Contract, Issuer sold

to the Buyer. In return, the Buyer agreed to pay to Issuer an equal percentage of Issuer's annual costs incurred in the ownership, operation and maintenance of the Project, including the debt service on the obligations issued to finance the Project.

Issuer and Entity X propose to execute further agreements (the “Proposed Agreements”), one with respect to each Project. Under the Proposed Agreements, Entity X will agree to pay Issuer directly, at times and in amounts that match Issuer’s cash-flow requirements, all or a portion of Issuer’s annual costs incurred in the ownership, operation and maintenance of the Projects, including the debt service on the obligations issued to finance the Projects. The Contracts will remain in full force and effect.

LAW AND ANALYSIS

Section 103(a) of the 1986 Code provides that, except as provided in § 103(b), gross income does not include interest on any state or local bond. Section 103(b) provides, in part, that § 103(a) shall not apply to any private activity bond which is not a qualified bond (within the meaning of § 141).

Section 141(a) provides that the term “private activity bond” means any bond issued as part of an issue which meets (1) the private business use test of § 141 (b)(1) and the private security or payments test of § 141(b)(2), or (2) the private loan financing test of § 141(c).

Section 141(b)(1) provides that, except as otherwise provided, an issue meets the private business use test if more than 10 percent of the proceeds of the issue are to be used for any private business use. Section 141(b)(6)(A) defines “private business use” as use (directly or indirectly) in a trade or business carried on by a person other than a governmental unit. Section 1.141-3(a) of the Income Tax Regulations provides that the 10 percent private business use test is met if more than 10 percent of the proceeds of an issue is used in a trade or business of a nongovernmental person.

Section 141(c) provides generally that an issue meets the private loan financing test if the amount of the proceeds of the issue which are to be used (directly or indirectly) to make or finance loans to persons other than a governmental unit exceeds the lesser of 5 percent of such proceeds, or \$5,000,000. Section 1.141-5(a) provides that bonds of an issue are private activity bonds if more than the lesser of 5 percent or \$5 million of the proceeds of the issue is to be used (directly or indirectly) to make or finance loans to persons other than governmental persons.

Section 1.141-1(b) defines a nongovernmental person as a person other than a governmental person. Section 1.141-1(b) defines governmental person as a state or local governmental unit as defined in § 1.103-1 or instrumentality thereof. Section 1.103-1(a) defines “state or local governmental unit” as a state, territory, a possession of the United States, the District of Columbia, or any political subdivision thereof.

CONCLUSIONS

Accordingly, we conclude that, under §

Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter.

The rulings contained in this letter are based upon information and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. While this office has not verified any of the material submitted in support of the request for rulings, it is subject to verification on examination.

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) of the 1986 Code provides that it may not be used or cited as precedent.

In accordance with the Power of Attorney on file with this office, a copy of this letter is

being sent to your authorized representatives.

Sincerely,

Assistant Chief Counsel
(Exempt Organizations/Employment
Tax/Government Entities)

By: Johanna Som de Cerff
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